

Appl. No. 10/730,346
Docket No. P-148
Amdt. dated March 1, 2010
Reply to Office Action mailed on December 2, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 1, 2, 4-7, 9-11 and 55-59 are pending in the application. Claims 3, 8 and 12-54 were previously canceled. Claims 55-59 were previously withdrawn as a result of an earlier restriction requirement. Consequently, Claims 1, 2, 4-7 and 9-11 remain under consideration.

With this Response, claim 4 has been amended to correct an improper dependency.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claim 4 has been rejected under 35 U.S.C. § 112, Second Paragraph, as “being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” Applicants have amended claim 4 to be dependent from claim 1. Applicants respectfully request reconsideration and withdrawal of the rejection.

wherein at least a portion of both the soluble mineral component and the phosphate component are coated on the surface of the composition such that at least part of the mineral component is dissolved in saliva of a dog or cat during mastication; and

Rejection Under 35 U.S.C. § 103(a)

Claims 1, 2, 4-7, and 9-11 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 4,247,562 (Bernotavicz), WO 01/17366 (Young), US Publication No. 2004/0076735 (Lancombe), for reasons of record on pages 4-10 of the Office Action. Applicants respectfully traverse this rejection.

Without conceding the basis of the rejection and/or the combination of references as outlined in the Office Action, as above, Applicants respectfully submit that the Office Action fails to consider, and the references fail to disclose, teach, or suggest, all of the elements of the present claims, specifically that “wherein at least a portion of both the soluble mineral component and the phosphate component are coated on the surface of the composition such that at least part of the mineral component is dissolved in saliva of a dog or cat during mastication.” Applicants submit that a proper 35 U.S.C. § 103(a) cannot stand where, as here, all of the claim elements have not been considered and are not taught or suggested by the references of record. As MPEP 2143.03 makes clear, “All words in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 USPQ

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494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).”

Applicants respectfully submit that the references of record fail to teach or suggest wherein at least a portion of both the soluble mineral component and the phosphate component are coated on the surface of the composition such that at least part of the mineral component is dissolved in saliva of a dog or cat during mastication, in combination with the other elements of claim 1. Accordingly, Applicants respectfully submit that a proper 35 U.S.C. § 103(a) rejection has not been made and respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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